



## Department of Energy

Washington, DC 20585

**SEP 10 2003**

### DECISION AND ORDER OFFICE OF HEARINGS AND APPEALS

#### Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 10, 2002

Case Number: VSO-0537

This Decision concerns the eligibility of [REDACTED] (hereinafter referred to as "the individual") to maintain an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> A local DOE Security Office suspended the individual's access authorization pursuant to the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

#### **I. Background**

This proceeding involves an individual who has been employed by the DOE for many years in positions that have required him to maintain a security clearance. Questions regarding the individual's alcohol consumption first arose in 1997 when the individual was on an overseas assignment. One day in 1997, the individual became very intoxicated, confronted an official from a sensitive country, initiated a verbal altercation with the official, and made inappropriate threats to the official (hereinafter referred to as "the 1997 incident"). This incident prompted the DOE to terminate the individual's overseas assignment. Following the incident, the DOE conducted a Personnel Security Interview (1997 PSI) with the individual. *See* Exhibit (Ex.) 4-2. Based on the information provided by the individual during the 1997 PSI, the DOE continued the individual's security clearance.

During a routine investigation into the individual's background in 2000, the DOE acquired information about the individual's alcohol consumption over the previous ten years which was higher than what the individual had reported to the DOE in the 1997 PSI. This discrepancy prompted the DOE to conduct another Personnel Security Interview with the individual (2000 PSI). Subsequently, the DOE referred the individual to a psychiatrist (DOE consultant-psychiatrist) for a mental evaluation. In September 2001, the DOE consultant-psychiatrist examined the individual and

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<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.



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then memorialized his findings in a report (hereinafter referred to as the Psychiatric Report or Ex. 2-1). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual is both alcohol dependent and a user of alcohol habitually to excess, and has shown no evidence of rehabilitation or reformation from those two alcohol-related conditions.

In March 2002, the DOE sent a Notification Letter to the individual in which it specifically described the derogatory information at issue and explained how the information falls within the purview of three potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. 710.8, subsections (h), (j) and (l) (Criterion H, J and L respectively).<sup>2</sup>

To support its Criterion H allegations, the DOE relies on the opinion of a DOE consultant-psychiatrist that the individual suffers from an illness or mental condition, *i.e.* Substance Dependence, Alcohol, that has caused a defect in his judgment and reliability in the past and could cause a similar defect in the future as long as the individual consumes alcohol or has not shown evidence of adequate rehabilitation or reformation.

As for Criterion J, the bases for the DOE's security concerns are the following:

- The diagnosis by a board-certified psychiatrist that the individual is a user of alcohol habitually to excess, and meets the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) criteria for Substance Dependence, Alcohol without Physiological Dependence, Active.
- The opinion of a board-certified psychiatrist that the individual currently drinks alcohol and has provided no evidence of rehabilitation or reformation.
- Statements made by the individual that he (1) drinks 36 beers per week, (2) has drunk 4-6 beers every evening for 10 years, and (3) becomes intoxicated every two to three months at his home.

With respect to Criterion L, the DOE cites statements made by the individual during the psychiatric examination and the 1997 PSI about the 1997 incident.

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<sup>2</sup> Criterion H pertains to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. 710.8(h). Criterion J concerns information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. 710.8(j). Criterion L relates to information that a person "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violations of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. 710.8(l).

The individual filed a Response to the Notification Letter and exercised his right to request an administrative review hearing. On April 10, 2002, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. After obtaining the requisite extensions of time from the OHA Director,<sup>3</sup> I conducted a two-day hearing in this case. 10 C.F.R. 710.25(g). At the hearing, 14 witnesses testified, two on behalf of the DOE and 12 on behalf of the individual. In addition to the testimonial evidence, the DOE tendered 67 exhibits into the record, and the individual submitted 105 exhibits. On May 12, 2003, I received the hearing transcript in the case. Both parties filed written closing arguments after they had an opportunity to review the hearing transcript. I closed the record in this case on July 16, 2003.

## **II. Regulatory Standard**

### **A. The Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden of persuasion on the individual because it is designed to protect national security interests. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An administrative review hearing is conducted "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. 710.27 (d). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence to mitigate security concerns.

### **B. Basis for the Hearing Officer's Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all

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<sup>3</sup> The hearing in this case was delayed almost four months beyond the regulatory time frame set forth in the Part 710 regulations so that classified information issues could be addressed by cognizant officials in the DOE.

the relevant information, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual's access authorization eligibility in favor of the national security. *Id.*

### III. Findings of Fact

According to the record, the individual has consumed alcohol for 30 years. The individual's alcohol usage varies depending on the circumstances in which he finds himself. For example, if he is hosting a dinner party at his home,<sup>4</sup> he might consume 12 beers in an evening. Hearing Transcript (Tr.) at 732-733. If he is on a diet, he might have wine with dinner and drink six beers during the course of the week. Ex. 4-1 at 25. If he is on-call for emergency duty during a particular week or taking his dogs to training classes, he consumes no alcohol. Tr. at 694, 727.

Until 1997, the individual appears to have experienced few problems<sup>5</sup> as the result of his alcohol consumption. In 1997, however, the individual was presented with some challenging living and work conditions on assignment in a sensitive country. According to the individual's account, he was alone for two weeks in an isolated part of a country where he could not speak the native language. Ex. 4-2 at 29; Closing Statement at 3; Tr. at 705. He had no work to do, no access to English newspapers, radio or television, and no one to talk to. Ex. 4-2 at 29, 34; Tr. at 705. Travel and other restrictions imposed on him made leisure activities difficult. *Id.* at 700-702. On occasion, the individual complained about his living conditions and restrictions to an official from the sensitive country (hereinafter referred to as the "foreign official"). Ex. 4-2 at 17. Tension and strain characterized the relationship between the individual and the foreign official. Closing Argument at 3.

During this period, the individual patronized a hotel bar where he drank beer. One day, the individual met three women at the hotel bar who encouraged him to share a bottle of vodka with them. Over a four hour period, the individual consumed two or three shots of vodka and 12-13 beers. Tr. at 709-711. At some later point, the individual and the three women retrieved another bottle of hard liquor from his hotel room and left the hotel. Ex. 4-2 at 45. According to the individual, hotel employees subsequently prevented the women from returning with him to the hotel. *Id.* at 46-47. The individual was convinced that the foreign official was responsible for the hotel employees' actions in blocking the women's return to the hotel. *Id.* The individual tracked down the foreign official and confronted him about the individual's perception that the foreign official was interfering with his social life. *Id.* at 48. A heated argument ensued between the two men, after which the individual threatened the foreign official. Some witnesses who observed the altercation described the individual's behavior as rude, obnoxious and arrogant. Ex. 3-9.

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<sup>4</sup> The individual testified that he hosts parties three or four times a year. *Id.* at 732.

<sup>5</sup> The record shows that 35 years ago the individual was arrested for possession of alcohol while a minor. This incident is so remote that I will accord little weight to it.



Immediately after the 1997 incident, the individual's boss ordered him to refrain from consuming alcohol completely. Ex. 4-2 at 84. A few days later, the DOE terminated the individual's overseas assignment early and require him to return home. After learning that he would be returning to the United States but while still in the sensitive country, the individual drank one or two beers. Ex. 4-2 at 146.<sup>6</sup>

When the individual returned home, the DOE conducted the 1997 PSI to obtain information about the extent of the individual's alcohol consumption. During the PSI, the individual reported that he drinks three beers three or four times a week, but may drink as many as 12 beers four or five times a year if he is hosting a party at his house. Ex. 4-2 at 128, 131. The DOE concluded on the basis of the information provided by the individual that he drinks habitually and sometimes to excess, but not on a frequent basis. Ex. 1-6 at 1. The DOE continued the individual's security clearance, noting that if the individual is involved in any alcohol-related incidents in the future, further processing may be necessary. *Id.*

Three years later, the DOE conducted another personnel security interview with the individual as part of a routine background reinvestigation. During the course of that interview, the individual related that he consumed "about four beers in the evening, four to six." Ex. 4-1 at 25. The individual added that he had been consuming alcohol at this level for the preceding 10 years. *Id.*

During the reinvestigation process, the DOE obtained the individual's medical records. According to the individual's medical records, his personal physician told the individual in 1998 to abstain from alcohol because the alcohol was exacerbating some his medical conditions. Ex. 2-2. In an entry in the individual's medical records in January 2000, the physician noted that the individual has no history of alcohol abuse but uses alcohol regularly. *Id.* In December 2000, the physician wrote that the individual "drinks copious amounts of beer," and encouraged the individual once again to stop drinking alcohol to help with weight reduction and hypertension. *Id.* The medical records also contain laboratory test results for the period 1993 to 2000. Of significance is that all the tests of the individual's liver enzymes during this period yielded results within the normal range.<sup>7</sup>

The DOE referred the individual to a DOE consultant-psychiatrist for a mental evaluation after it discovered that the individual may have under-reported his alcohol consumption levels during the 1997 PSI. After reviewing the individual's entire personnel security file and his medical reports, the

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<sup>6</sup> At the hearing, I asked the individual if he had abided by his boss' order that he refrain from drinking and he testified that he had abided by her request. Tr. at 755. The individual's testimony, however, directly contradicts the information that he provided to the Personnel Security Specialist during the 1997 PSI. He revealed in the 1997 PSI that two days after he was ordered to abstain from alcohol, he was informed that he would be leaving the sensitive country. The individual stated "[s]o when I was told I was being pulled out I said, oh, okay, then I said, oh, I'll have a beer." Ex. 4-2 at 137. He then added that he thought that he never had more than two beers. *Id.*

<sup>7</sup> In May 2002, one of the individual's liver enzymes, the gamma-glutamyltransferase (GGT) was slightly elevated. See Ex. M. The individual's physician testified at the hearing that factors other than alcohol, such as medications that the individual was taking, could have caused the elevation in the GGT levels. Tr. at 335.

DOE consultant-psychiatrist examined the individual. The DOE consultant-psychiatrist subsequently diagnosed the individual as suffering from both alcohol dependence and habitual use of alcohol to excess. He opined further that the individual has an illness or mental condition, Substance Dependence, Alcohol that causes or may cause a significant defect in his judgment and reliability until such time as he can show adequate evidence of rehabilitation or reformation.

#### **IV. Analysis and Findings**

I have thoroughly considered the voluminous record of this proceeding, including the hundreds of pages of documentary evidence tendered in this case and the testimony of the 14 witnesses presented at the hearing. In resolving the question of the individual's continued eligibility for access authorization, I have been guided by the applicable factors described in 10 C.F.R. 710.7(c).<sup>8</sup> After due deliberation, I have determined that the individual's access authorization should be restored. I find that such restoration will not endanger the common defense and security and is clearly consistent with the national interest, 10 C.F.R. 710.27(a). The specific findings that I make in support of this decision are discussed below.

##### **A. Criteria H and J**

Under the Part 710 regulations, the DOE may rely on the diagnosis of a psychiatrist that a person suffers from an illness or mental condition that causes or may cause a significant defect in judgment and reliability as a reason for concluding that a security concern exists under Criterion H. Similarly, the regulations allow the DOE to find a security concern under under Criterion J based on a psychiatrist's diagnosis that a person is alcohol dependent. It was principally on the strength of a DOE consultant-psychiatrist's opinion that the DOE determined that derogatory information existed under Criteria J and H.

The individual has challenged the underlying bases for the DOE consultant-psychiatrist's diagnoses and suggests that no security concern exists. To support this position and to controvert the Criteria J and H allegations, the individual presented documentary and testimonial evidence from a forensic psychologist, his personal physician and many lay persons.

This case is very difficult to resolve because there is compelling evidence on both sides. For example, the DOE consultant-psychiatrist and the forensic psychologist both presented convincing, credible testimony at the hearing to support their diametrically opposed professional opinions regarding the issue of whether the individual suffers from alcohol dependence, and is a user of alcohol habitually to excess. In addition, the individual's physician and many lay witnesses provided

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<sup>8</sup> The factors enumerated in 10 C.F.R. 710.7(c) include the following: the nature, extent, and seriousness of the conduct; the circumstances surrounding his conduct, to include knowledgeable participation; the frequency and recency of his conduct, the age and maturity at the time of the conduct; the voluntariness of his participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for his conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence, and other relevant and material factors.

relevant insight into, and probative evidence of, the individual's alcohol usage in a variety of settings. Finally, the individual himself provided information about his drinking habits and future intentions regarding the use of alcohol. The most probative evidence is set forth below.

# **1. The DOE Consultant-Psychiatrist's Opinion**

The DOE consultant-psychiatrist is board certified in Adult Psychiatry and has practiced psychiatry for 27 years. Tr. at 19. He is also certified by the American Society of Addiction Medicine. *Id.* at 19, 120. During his career, the DOE consultant-psychiatrist has served as the Medical Director of an Alcohol and Drug Treatment Program and treated approximately 10,000 patients with addictive disorders.<sup>9</sup>

To support his diagnosis that the individual suffers from alcohol dependence, the DOE consultant-psychiatrist refers to the relevant portion of the DSM-IV which addresses this mental condition. According to the DOE consultant-psychiatrist, the individual meets three of the seven criteria (three is the minimum number necessary for a substance dependence diagnosis) in the DSM-IV for Substance Dependence, Alcohol.<sup>10</sup> The three criteria that the DOE consultant-psychiatrist scored as positive are the following ones:

- Criterion 4: there is a persistent desire or unsuccessful efforts to cut down or control substance use;
- Criterion 5: a great deal of time is spent in activities necessary to obtain the substance (e.g., visiting multiple doctors or driving long distances), use the substance (e.g., chain smoking), or recover from its effects;
- Criterion 7: the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance (e.g. current cocaine use despite recognition of cocaine-induced depression, or continued drinking despite recognition that an ulcer was made worse by alcohol consumption).

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<sup>9</sup> Counsel for the individual tried to undermine the DOE consultant-psychiatrist's competence by eliciting testimony about one or more malpractice actions in which the DOE consultant-psychiatrist was a named defendant. From my perspective, it is not surprising that a medical doctor who has treated thousands of patients over three decades of medical practice might be the subject of a malpractice action. Accordingly, I will accord no weight to any information adduced at hearing regarding lawsuits filed against the DOE consultant-psychiatrist or any judgments resulting from those lawsuits.

<sup>10</sup> In his Psychiatric Report, the DOE consultant-psychiatrist originally found that the individual met four of the seven criteria in the DSM-IV for Substance Dependence, Alcohol, Ex. 2-1. After listening to the testimony of the individual's witnesses at the hearing, the DOE consultant-psychiatrist changed his opinion and decided that the individual did not meet Criterion 6. Criterion 6 reads as follows: "the reduction or abandonment of important social, occupational or recreational activities in favor of alcohol." Near the end of the hearing, the DOE consultant-psychiatrist also withdrew his opinion that the individual meets the diagnosis of Substance Abuse, Alcohol as a default diagnosis if it is determined that the individual does not meet the DSM-IV definition of Substance Dependence, Alcohol.

With regard to Criterion 4, the DOE consultant-psychiatrist testified that the individual told him during the psychiatric examination that he was trying to cut down on his use of alcohol because of weight problems and other health issues. Tr. at 82-83. For this reason, the DOE consultant-psychiatrist finds that the individual meets Criterion 4.

As for Criterion 5, the DOE consultant-psychiatrist opined that the individual meets this criterion because he spends several hours a day drinking. *Id.* at 83-84.

According to the DOE consultant-psychiatrist, the individual meets Criterion 7 because his physician has told him repeatedly to abstain from alcohol to help control his weight, stomach problems, acid reflux problems, and hypertension. *Id.* at 86. The DOE consultant-psychiatrist also noted for the record that alcohol can interfere with the effectiveness of antidepressant drugs which the individual is taking.<sup>11</sup>

The DOE consultant-psychiatrist also found it significant that the individual has a family history of alcohol use.<sup>12</sup> Tr. at 41-42. According to the DOE consultant-psychiatrist, alcohol dependence is highly inheritable. *Id.* Studies show, stated the DOE consultant-psychiatrist, that persons with a first-degree relative who is alcoholic have a six times greater risk of developing an alcohol problem than those with first degree relatives without alcohol problems. *Id.* Moreover, the DOE consultant-psychiatrist commented that the forensic psychologist, in his evaluation of the individual, failed to consider the individual's genetic link to alcoholism. *Id.* at 110.

The DOE consultant psychiatrist also opined that the individual is a user of alcohol habitually to excess. Tr. at 90. According to the DOE consultant-psychiatrist, drinking "habitually to excess" means a recurrent pattern of drinking to the point of intoxication. *Id.* The DOE consultant-psychiatrist finds that the individual's pattern of consuming 12 beers four or five times a year to meet the definition of drinking "habitually to excess." Ex. 2-1 at 6. The DOE consultant-psychiatrist admitted at the hearing, however, that the individual's laboratory results did not show the habitual use of alcohol to excess. Tr. at 76. However, he dismissed the diagnostic value of these results, stating that in 30-40% of people who drink to excess there are no blood indicators of excessive alcohol use. *Id.*

The DOE consultant-psychiatrist testified that he believes the individual was minimizing his alcohol usage at the time of the psychiatric examination because of the discrepant information that he reported during the examination. Tr. at 66. At the hearing, the DOE consultant-psychiatrist expanded upon the information contained in his Psychiatric Report. He testified that using the Widmark

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<sup>11</sup> These drugs are prescribed for Major Depressive Disorder and Dysthymic Disorder. The DOE has determined that these two mental illnesses are not currently security concerns because the DOE consultant psychiatrist has found that (1) the individual has never exhibited a significant defect and judgment in the past as the result of these two conditions and it is unlikely that he will in the future, and (2) the antidepressant drugs have successfully controlled these two mental conditions for the individual for many years.

<sup>12</sup> According to the record, the individual's brother and grandfather are alcoholics. Tr. at 41-42.



Equation,<sup>13</sup> an equation that estimates blood alcohol level given a person's age, height, weight, sex, number of drinks consumed, and length of time the alcohol is consumed, he can calculate that the individual would be intoxicated if he were to drink six to eight beers over a three-hour period. Tr. at 55.

In his Psychiatric Report, the DOE consultant-psychiatrist provided detailed information about what the individual in this case needed to show to demonstrate rehabilitation or reformation.<sup>14</sup> At hearing, the DOE consultant-psychiatrist revised his opinion, stating that if the individual did not contest his finding that he is alcohol dependent then the DOE consultant-psychiatrist would find reformation after only one year of sobriety. *Id.* at 96-98. The DOE consultant-psychiatrist explained that the individual's admission, combined with one year of sobriety, would give him confidence that the probability of the individual's returning to drinking is low. *Id.* at 97. When questioned at the hearing why only one year of sobriety instead of three is sufficient for someone to demonstrate reformation from alcohol dependence, the DOE consultant-psychiatrist responded that in this case there are three reasons. First, the individual has not previously undergone treatment for alcohol-related issues. *Id.* at 98. Second, there has been only one example of a significant defect in judgment and reliability while using alcohol, so alcohol has not caused recurrent problems in his life. *Id.* Third, the individual had stopped drinking as of the time of the hearing. *Id.*

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<sup>13</sup> According to the record, there are different variables that can be used to perform calculations under the Widmark Equation. At the hearing, Counsel for the individual objected to the variables used by the DOE consultant-psychiatrist. Tr. at 381-385. In addition, Counsel for the individual submitted alternative calculations that contradict the results obtained by the DOE consultant-psychiatrist using the Widmark Equation. Exs. R and S.

I decline to attempt to recreate artificially the individual's blood alcohol concentration using the Widmark Equation or any other blood content calculator. The parties themselves agree that many variables factor into the absorption and metabolism of alcohol in a given person. Tr. at 381-385; DOE Closing Argument at 7-10 and Attachments 1-9 thereto. I do not believe that it is prudent to use these calculations to reach a finding that the individual would or would not have been intoxicated on a specific day given the number of alcoholic beverages that he consumed, his height, weight, and other variables, some of which are unknown or difficult to ascertain.

<sup>14</sup> According to the DOE consultant-psychiatrist, to show adequate evidence of rehabilitation, the individual can either (1) produce documented evidence of attendance at Alcoholics Anonymous (AA) for a minimum of 100 hours with a sponsor, at least twice a week, for a minimum of one year and completely abstain from all alcohol for one year following completion of the program; or (2) satisfactorily complete a minimum of 50 hours of professionally led substance abuse treatment program for a minimum of 6 months, including what is called "aftercare," and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of one and one-half years following the completion of this program. Tr. 2-1 at 17.

As for reformation, the individual has two alternatives, according to the DOE consultant-psychiatrist. First, if the individual goes through one of the two rehabilitation programs listed above, then 2 years of absolute sobriety is necessary. If the individual does not go through either of the two rehabilitation programs listed above, then 3 years of absolute sobriety is necessary. *Id.*

## 2. The Forensic Psychologist's Opinion

The forensic psychologist holds a Ph.D. in psychology and is board-certified in clinical psychology and forensic psychology. Ex. P, Tr. at 239. He has practiced clinical and forensic psychology for 35 years and is a widely published author in his discipline. Ex. P. The forensic psychologist currently teaches psychopathology, psychotherapy, and psychological assessment at a major university and is an adjunct professor at a law school where he teaches psychological assessment, the use of psychological tests, and the DSM-IV. Tr. at 238. The forensic psychologist began working with the DSM in its earliest form as a mimeographed sheet and has followed its progress since it first became memorialized as the DSM-I through its current version, DSM-IV-TR. *Id.* Over the years, the forensic psychologist has taught courses involving the DSM to lawyers, law students, psychologists, psychology students, psychiatry students, psychiatry residents, social workers, and psychoanalysts. *Id.* at 239.

In October 2002, the forensic psychologist conducted a psychological evaluation of the individual over a three-day period. Ex. O. In addition to evaluating the individual via structured and unstructured interviews, the forensic psychologist administered a battery of psychological tests to the individual. *Id.* Those tests included the Rorschach, the Minnesota Multiphasic Personality Inventory-2, the Thematic Apperception Test, and a Sentence Completion Test. *Id.* According to the forensic psychologist, the tests introduce the increased probability of objectivity in a field fraught with subjectivity. Tr. at 242.

The forensic psychologist opined that the individual's test scores on the psychological tests are "very inconsistent with those of persons with known histories of alcohol dependence or abuse." Ex. O at 2. In addition, the validity measures, which offer evidence of a patient's test-taking attitudes and detect tendencies to exaggerate or minimize pathology, indicate that the individual approached the evaluation in a direct, forthright, and honest manner. *Id.* at 1. At the hearing, the forensic psychologist described in detail some of the test findings. The Rorschach, or ink blot test, provides an overall functioning test that lets you know whether the demands on a person's emotions are greater than a person can handle. Tr. at 248. This test is important, according to the forensic psychologist, because people who are highly susceptible to drinking to excess do so because they do not have the usual coping mechanisms to take care of the demands on them. *Id.* The Rorschach test reveals that the individual has adequate resources to cope with the demands placed on him, even in this time of extreme stress relating to this administrative review process. *Id.* at 249.

The MMPI-2 test is an actuarial test of approximately 570 true and false questions. Of importance on the MMPI-2 test results, according to the forensic psychologist, is that there is no indication that the he was trying to look too good or deliberately answered questions incorrectly. *Id.* at 247. According to the forensic psychologist, the individual is not sycophantic (i.e. attempting to win favor or advance himself by flattering persons or influence) or dissembling (i.e. concealing one's real motives under pretense). *Id.* at 251. In addition, the forensic psychologist testified that the individual's pattern of scores on the MMPI-2 is highly inconsistent with a person who is or will become an alcoholic. *Id.* at 250.

The forensic psychologist readily admitted at the hearing that no one instrument can definitively rule out a problem with alcohol, but all the pieces of information are cumulative and useful in making a final assessment. *Id.*; Ex. O at 2. The forensic psychologist testified that after reviewing the results from the battery of tests, he next looked to the DSM-IV to evaluate whether the individual is alcohol dependent or abusive.<sup>15</sup> According to the forensic psychologist, the individual only meets Criterion 7 of the Substance Dependence section of the DSM-IV. With the other two criteria lacking, he finds that the individual does not meet the DSM-IV definition of Substance Dependence.

Regarding the two criteria that the DOE consultant-psychologist scored as positive, the forensic psychologist vehemently disagreed with that assessment. With respect to Criterion 4, the forensic psychologist testified that it is clear that the individual has no persistent desire to cut down on the number of drinks that he consumes because he does not want to quit drinking. *Id.* at 270. He will do so only if it means that he will not lose his clearance. *Id.* The forensic psychologist urges me to look at the individual's motivation or lack thereof in evaluating this criterion. The forensic psychologist gives as an example a person who decides to give up desserts. If the motivation is because the person is a diabetic, that is different from the person who is giving up desserts to lose weight. *Id.* at 271. Similarly, according to the forensic psychologist, the individual is not trying to cut down his alcohol intake because he believes he is an alcoholic but because in the past he has wanted to lose weight and currently he is trying to keep his security clearance. As for the second part of Criterion 4, *i.e.*, unsuccessful efforts to cut down on alcohol, the forensic psychologist opines that when the individual has wanted to cut back on his intake, he has done so successfully in the past. *Id.* at 272.

The forensic psychologist believes that Criterion 5 requires a person to spend a *great* deal of time, not just time, obtaining, using or recovering from the substance. *Id.* at 273. The DOE consultant-psychiatrist focuses on the "using" portion of Criterion 5 to score that as positive. The forensic psychologist believes that this criterion requires a person "to absent [him]self from other activities to have an opportunity to drink." *Id.* at 273. The evidence presented in this case simply does not support the DOE consultant-psychiatrist's position, according to the forensic psychologist. Specifically, the individual would not have time to take care of his horses and dogs; go to grooming and behavioral school with them; go to work and have an exemplary work attendance and performance record; or fulfill his commitments that require him to drop everything on a moment's notice to perform emergency functions. *Id.* at 274. Regarding the DOE consultant-psychiatrist's position that drinking over a several-hour period while at home is the problem, the forensic psychologist's position is that a true alcoholic drinks but does not attend to other activities. The alcoholic is not available to help clean up after dinner, doesn't eat at the table with his wife and converse about matters, doesn't take care of pets, etc. *Id.* at 275.

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<sup>15</sup> At the hearing, the forensic psychologist also addressed the individual's family history of alcoholism. He testified that such information is useful because a person with a genetic link to alcoholism is six times more likely to develop problems with alcohol. Tr. at 257. However, he cautioned that no one would ever diagnose a person with any condition based on familial history. *Id.* For diagnosis purposes, it does not matter if someone's relatives are alcoholic if a person does not fit the DSM-IV criteria. *Id.*

The forensic psychologist concluded that if the individual had an alcohol problem, he would not be able to fool all the people all the time. *Id.* at 281. <sup>16</sup> For example, during the one week a month that the individual is on-call to perform an important function with safety implications, testified the forensic psychologist, he would be irritable and would exhibit withdrawal symptoms. *Id.* at 280. The forensic psychologist then noted that all the affiants in this case provided testimony demonstrating that no one whose life intersects with the individual's in different ways has observed any behavior suggestive of alcoholism. To be sure, there was a very disturbing incident in 1997 that clearly had its origins in excessive alcohol use. However, it is the opinion of the forensic psychologist that the 1997 incident should not be used as the basis of a current diagnosis of alcohol dependence. Rather, it should be viewed as a single, aberrant episode in a work and life history remarkably free from serious disruptions as the result of alcohol use. Ex. O at 4.

### 3. The Physician's Opinion

The individual's physician has seen the individual and his wife as patients since the early 1990s. *Id.* at 320. The physician related that as a family practitioner, he has a number of patients who are recovering alcoholics, as well as people who are active in their disease. *Id.*

When questioned at the hearing about his medical notes written in December 2000 indicating that the individual "drinks copious amounts of beer," the physician stated that he considered a 6-pack of beer to be a copious amount of beer. *Id.* at 346. The physician stated that he never suggested to the individual that he needed treatment for alcoholism. *Id.* at 326. He added that he had encouraged the individual to stop drinking not because of addiction issues, but rather for medical purposes. *Id.* at 360. He explained that the individual's medical issues included stomach pain, heartburn, and elevated blood pressure. *Id.* at 327. When asked whether the individual's wife ever complained to him about her husband's use of alcohol, the physician said, "no." *Id.* at 334. Finally, documentary evidence in the record shows that in January 2000, the physician wrote in the individual's medical file that the individual has no history of alcohol abuse but uses alcohol regularly. Ex. 2-2.

### 4. The Individual's Wife's Assessment

The individual and his wife have been married for 26 years. *Id.* at 444. The wife revealed at the hearing that she is a recovering alcoholic and was the child of an alcoholic parent. *Id.* at 450. She

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<sup>16</sup> Under questioning, the forensic psychologist discussed "functional alcoholics" and "hidden alcoholics." Tr. at 261-262. A "functional alcoholic" is an alcoholic who can function marginally well. The person can get to work and hold down a job. However, the forensic psychologist stated that a "functional alcoholic" cannot work to the extent that he or she gets excellent ratings, and people enjoy being around them. According to the forensic psychologist, the individual is a superb worker as exemplified by his outstanding ratings, and people enjoy being around him. A "hidden alcoholic" is an alcoholic that some people, like co-workers, might not suspect has a problem with alcohol. However, some people would know, like the neighbors, the people who go to parties with the person, and the person who does dog training with him in the evening. It is the forensic psychologist's opinion that no one can maintain a serious problem with alcohol without slipping up somewhere, and the individual has not provided any recent indication that alcohol is a problem for him. *Id.* at 262.



stated that she drank for 20 years and stopped at the urging of her family doctor. *Id.* at 450. She has not consumed alcohol since 1984. *Id.* at 451. According to the wife, she believes that she would know if her husband was an alcoholic or if he drinks alcohol to excess. *Id.* at 462, 467. She testified that she has never observed her husband with a hangover. *Id.* at 460. In their 26 years of marriage, she has never been concerned about her husband's consumption of alcohol. *Id.* at 483-484.

The wife described their evening routine as follows: her husband prepares dinner in the evening before she returns home from work; they eat, do chores, and watch TV. *Id.* at 454. It is her husband's responsibility to feed the four horses and five dogs. *Id.* She reports that her husband never drinks when he takes the dogs to training class. *Id.* at 459. Occasionally, he will have a beer after class. *Id.*

The wife testified that she and her husband like to entertain and have dinner parties. *Id.* at 463. They still provide alcohol for their guests at the parties. *Id.* at 469. She testified that she did not know if there is currently alcohol in the house. *Id.* at 468.

## 5. The Dog Trainer's Observations

One of the witnesses who submitted an affidavit into the record and testified on the individual's behalf at the hearing owns a dog training center where the individual and his dogs attend classes. The witness will be referred to as the "dog trainer" for ease of reference.

The individual has brought several dogs for training over the years to the dog trainer. Ex. E. Over the last year, the individual has brought two dogs for training. *Id.* According to the dog trainer, the individual has never missed a class during the past year. Tr. at 398. The classes are in the evenings and on Saturday morning. *Id.* at 400. The dog trainer testified that she has never smelled alcohol on the individual's breath. *Id.* at 401. The dog trainer affirmed in an affidavit that she is physically close to her clients during the sessions and would have had suspicions if the individual had been drinking. Ex. E. She attested that she would never permit a client who was impaired to participate in a class because it is dangerous for both the client and the animal. *Id.*

## 6. Co-Worker #1's Observations

One of the individual's co-workers for the past two years testified that she sees the individual once per day, goes to lunch with him once or twice per week, and attends dinner parties at his house approximately once a month. Tr. at 509-511; Ex. I. She related that the main focus of the parties at the individual's house is food. Ex. I at 2. The co-worker stated that alcohol is served at these parties but no one, including the individual, drinks excessively at these parties. *Id.* The co-worker further attested that she has never seen the individual drunk, either at or after a party, or at any other time. *Id.* at 3. She added that the individual is not absent from work often, is prompt, and has never appeared "hungover" in the mornings at work. *Id.*

The co-worker related further that she traveled with the individual to an out-of-state conference in October 2001. Tr. at 517. There was free beer at the conference, but the individual refused it and

all other alcoholic beverages. *Id.*

The co-worker stated that she is especially sensitive to issues of excessive drinking and alcohol. Ex. I at 5. She provided very credible, moving testimony about personal events in her life that explains why she chooses not to be around people who drink alcohol to excess. Tr. at 520. She added that she has been in therapy with a psychologist off and on for 10 years because of an alcohol-related event in her life, and that the therapy has taught her to avoid situations involving excessive alcohol usage. Tr. at 522-525. In her affidavit, the co-worker stated that if she ever suspected that the individual had issues with alcohol at all, she would not have gone to the October 2001 conference with him. Ex. I at 6. She concluded by stating further that she would not have a personal friendship with the individual or associate with him if she thought that he had alcohol problems because she would believe that her personal safety would be at stake. *Id.*

#### 7. Manager #1's Observations

A manager who oversees a special emergency team for which the individual volunteered attested to the individual's professional competence and value to the team. Ex. G. Manager #1 has seen the individual two or three times each month for seven or eight years, and has attended a party at his house. Tr. at 153, Ex. G at 3. He has never seen the individual intoxicated. Tr. at 144. According to Manager #1, he would have taken note of any evidence, no matter how slight, that pointed toward the individual or any other member of the emergency team as having a drinking problem. *Id.* at 4. Had Manager #1 had any suspicion that the individual had a drinking problem, the manager would have removed him from the team.<sup>17</sup> Manager #1 emphasized that no one on an emergency team can be inebriated and perform his or her responsibilities. Tr. at 138.

#### 8. Manager #2's Observations

Manager #2 supervised the individual from 1995 to 2001. Ex. C; Tr. at 415. During that time, he never saw the individual drunk or impaired, and never observed anything that made him believe that the individual might have an alcohol problem. Ex. C. At the hearing, Manager #2 testified that he had taken courses on detecting the signs of alcoholism or other problems in the workplace. Tr. at 432. He related that he traveled occasionally with the individual and never saw any signs of excessive drinking. *Id.* at 437. He concluded by stating that the individual was always fit for duty when he supervised him. *Id.* at 439.

#### 9. Supervisor #1's Observations

Supervisor #1 has supervised the individual for one and one-half years. She describes the individual as a good employee who is always bubbly, optimistic and ready to start the day on a positive note.

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<sup>17</sup> Manager #1 testified that he knew about the 1997 incident but it did not affect his decision to allow the individual to remain on the special team. Tr. at 143-144. While he did not know all the details surrounding the 1997 incident, he suggested that what he did know allowed him to excuse the conduct.

Tr. at 589. She has not seen any direct or indirect evidence that the individual has a drinking problem. She has attended three or four dinner parties at the individual's home where beer, wine, and soft drinks were available. Ex. C at 2. She attested that the individual was not intoxicated or impaired in any way during those social events. *Id.*

According to Supervisor #1, she has not seen any signs of alcohol-related strain in his relationship with his wife. She related that she knows the signs of alcohol abuse in a marriage because her ex-husband was a heavy drinker who became mean and physically abusive. Ex. C at 3; Tr. at 592. She also related that she served in a branch of the military for two decades and held various supervisory positions in a military hospital. *Id.* at 590. There, she was in charge of many patients who were beginning rehabilitation from drug and alcohol abuse. Ex. C at 3. Part of that supervision was observation for signs of covert substance abuse. *Id.* She is very attuned to signals of substance abuse or dependence, and is particularly watchful around people with security clearances. *Id.*

#### 10. Supervisor #2's Observations

Prior to 2001, the individual was assigned to support the work of a person whom I will referred to as Supervisor #2. Tr. at 604. Supervisor #2 saw the individual at least three or four times a week. Ex. B at 1. She stated that the individual's work was prompt, methodical and well thought out. According to the supervisor, the individual had a high degree of knowledge, and was very professional. *Id.*

Supervisor #2 testified that has socialized with the individual and his wife on several occasions over the last seven years. She estimates that she attends 10 parties a year at the individual's house. Tr. at 612. She relates that the parties are fun, family events and that she brings her two children with her to the parties. Ex. B at 2. She attests that she has never seen the individual drunk or impaired in any context. Tr. at 609; Ex. B at 2. Furthermore, she reports that she has never observed any tension between the individual and his wife over his drinking or anything else. *Id.*

#### 11. An Acquaintance's Observations

The acquaintance met the individual three or four years ago. Ex. F at 1. Typically, she visits the individual and his wife approximately once a month at their home. *Id.* She has never seen the individual drunk or impaired in any way. *Id.* She related in an affidavit that had she seen him get intoxicated, she would not have gone back to his house because she has had unpleasant experiences with alcohol abusers. *Id.*

In December 2000, she was in a group of people that included the individual and his wife who went on a vacation to a resort. Ex. F at 2. During the four or five day trip, everyone consumed alcohol except the individual's wife. Tr. at 492. She never thought that the individual had too much to drink during that vacation. *Id.* at 494.

In April 2002, she realized that the individual had stopped drinking beer when she went to his house

for dinner and he offered her a non-alcoholic beer. Ex. F at 2. He did have a glass of wine with dinner but since that time she has not seen him consume any alcohol. *Id.*

## **12. A Colleague's Perspective**

One of the witnesses has worked with the individual for two years and sees him on a daily basis. Tr. at 538. The colleague related that he has gone on business trips with the individual and seen him consume only one beer. He has socialized with the individual at his home and never has seen him drunk or impaired from alcohol. He has never seen the individual hung over, looking ill from alcohol, or having any problems stemming from drinking. Ex. D at 2. The witness also opined, based on his previous work experience in the personnel security field, that objective evidence is important in determining whether a person has a problem with alcohol. *Id.*

## **13. A Neighbor's Observations**

One of the individual's neighbors provided an affidavit stating that he had asked the individual and his wife to join an Mounted Search and Rescue organization a year ago. Ex. Q. The organization helps find children separated from their parents in crowds and functions any way the sheriff's office desires. *Id.* The neighbor has attended parties at the individual's home and while the neighbor has seen the individual consume alcohol, he has never "seen him even tipsy - slurring his words, staggering or doing anything that . . . would show he had too much to drink." *Id.* at 2.

## **14. Co-Worker #2's Observations**

Co-worker #2 has known the individual for one and one-half years. Ex. K. According to her affidavit, she has gone to the individual's home approximately five times for dinner. *Id.* She averred that she has never observed the individual consuming too much alcohol during these dinners. *Id.* In addition, she relates that she has traveled on out-of-town business with the individual. *Id.* She attests that she considers the individual one of her favorite travel companions because she feels safe and comfortable around him. *Id.* On one particular trip, she requested a hotel room adjacent to his in the event that she needed help. *Id.* During that trip, she never saw the individual consume any alcohol. *Id.*

## **15. A Former Colleague and Friend's Perspective**

One of the individual's former colleagues and current friend provided an affidavit in which he attested that he goes to dinner at the individual's house approximately once a month. Ex. H. He relates that he has seen the individual drink but never to excess. *Id.* He adds that he has never seen the individual slur his words, stagger or stumble around, appear red, flushed or in a haze, or act in any way like someone who is impaired. *Id.*

The affiant also went out to lunch with the individual many times. *Id.* According to the affiant, he never saw the individual consume alcoholic beverages at lunch. *Id.*



## 16. The Individual's Testimony regarding his Alcohol Usage

At the hearing, the individual testified that after the DOE consultant-psychiatrist told him his opinion that the individual was drinking habitually to excess, he stopped consuming alcohol completely. Tr. at 717. According to the individual, between January and April 2002 he hosted five dinner parties and at two or three of those parties he had a glass of wine. *Id.* at 718. In April 2002, the individual related that his attorney instructed him to stop drinking completely. *Id.* at 721. The record is clear that the individual abided by his attorney's instructions through the end of October 2002. *Id.* Between November 2002 and May 2003, the individual admits to drinking wine occasionally. See Record of Telephone Conference among the individual, the DOE Counsel, and the Hearing Officer (May 23, 2003). During that telephone conference, I inquired what the individual's intentions with regard to drinking are if his security clearance is restored. He responded that he will probably occasionally drink some wine. *Id.* On August 27, 2003, I convened another post-hearing telephone conference with the individual and the DOE to clarify what I perceived to be some conflicts in the record about the individual's alcohol consumption. See Record of Post-Hearing Telephone Conference among the Hearing Officer, the DOE Counsel and the individual (August 27, 2003). During that telephone conference, the individual revealed that between May and August 2003, he had consumed wine occasionally with dinner. *Id.* When I queried whether the individual had drunk any beer between September 2001 and August 2003, he responded that he has had an occasional beer. *Id.* When queried about the motivation for his dramatic reduction in alcohol consumption since September 2001, the individual related that his motivation was twofold: to lose weight and to keep his job. *Id.* When I asked whether he would resume drinking after he reaches his ideal weight, the individual stated that his diet is not a short-term one but he recognized that he needs to change his lifestyle to reduce and maintain a healthy weight. *Id.* When asked if he would resume drinking at pre-September 2001 levels, the individual responded, "no." *Id.*

## B. Evaluation of Criteria H and J Evidence

### 1. Whether the Individual Suffers from Alcohol Dependence

As is evident from the recitation of the evidence set forth above, the experts disagree fundamentally about whether the individual meets the definition of Substance Dependence, Alcohol as that term is defined in the DSM-IV. While I respect the DOE consultant-psychiatrist personally and his professional competence and expertise in the area of alcohol addiction, I accorded more weight in this case to the testimony of the forensic psychologist and the individual's personal physician in finding that the individual does not suffer from alcohol dependence. My finding in this regard was also influenced by the convincing testimony of many witnesses who had worked, traveled, and socialized with the individual and observed him in everyday settings, including those in which he

consumed alcohol.<sup>18</sup>

As an initial matter, both experts agree that the number of alcoholic beverages consumed by a person is not a determinative factor for a diagnosis of alcohol dependence under the DSM-IV. Tr. at 258, 775. Both experts also agree that the DSM-IV requires three of the seven criteria to meet the definition of alcohol dependence. In addition, both experts agree that the individual meets Criterion 7 of that definition. The disagreement comes with respect to Criteria 4 and 5 of the definition.

Based on the evidence before me, I find that it is possible that the individual meets Criterion 4 of the DSM-IV criteria for alcohol dependence. That criterion requires that "there is a persistent desire or unsuccessful efforts to cut down or control substance use." The record suggests that the individual has never had a "persistent desire" to cut down or control substance use, but rather has always attempted to cut down or control his alcohol use after being requested to do so by someone. Regardless of whether his efforts to cut down were internally or externally motivated, I next looked at how successful those efforts were to evaluate Criterion 4. Immediately after the 1997 incident, the individual's boss told him to abstain completely from alcohol. While he claimed at the hearing that he did abstain in accordance with his boss' directive, the individual's statements during the 1997 PSI suggest that he drank one or two beers after learning that he was being sent home in contravention of his boss' directions. In September 2001, the individual decided to stop drinking after meeting with the DOE consultant-psychiatrist. He admitted, however, that between January and April 2002, he drank two or three glasses of wine. In April 2002, the individual's lawyer told him to stop drinking alcohol completely. Yet, in May 2003, the individual revealed that he occasionally had a few glasses of wine after November 2002. *See also* Individual's Closing Statement at 2. These examples suggest that while the individual was successful in reducing his alcohol consumption from previous levels, he was unsuccessful in his efforts to abstain from drinking alcohol.

As for Criterion 5, I find that the individual does not meet the criterion that he spends a great deal of time in activities necessary to obtain the substance, use the substance, or recover from its effects. The experts seem to agree that the individual does not spend a great deal of time obtaining or recovering from alcohol. Their viewpoints diverge on whether the individual spends a great deal of time using alcohol. The DOE consultant-psychiatrist found that the individual met this criterion because he spends many hours drinking, and the DOE Counsel pointed out in his closing statement that chain-smoking is a nicotine dependent condition that most closely parallels the individual's drinking problems. DOE Closing Statement at 6. The forensic psychologist, on the other hand,

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<sup>18</sup> In his closing statement, the DOE Counsel suggested that I should accord little weight to the lay witnesses' testimony in this case because they were carefully screened by the individual's Counsel. I disagree. One of the purposes of an administrative review hearing is to allow the individual to bring forward documentary and testimonial evidence to mitigate DOE's security concerns. The observations and the perceptions of these lay persons are corroboration for the individual's contention that he does not drink alcohol to excess and has not exhibited any behavior indicative of an alcohol-related problem. In a few instances, the lay witnesses provided very moving, personal accounts of their own experiences with persons who abused alcohol. This kind of evidence is quite relevant and material to the issues before me.

interprets this criterion as requiring some indicia that a person absents himself from other activities in order to spend a great deal of time using alcohol. He then chronicles all the activities and commitments that require the individual to abstain from alcohol for days or weeks at a time.

While the DOE Counsel suggests that the forensic psychologist applied the DSM-IV in a "convoluted and circuitous" manner (DOE Closing Statement at 2), I disagree. It seems quite unlikely that a forensic expert who was involved in the development of the earliest versions of the DSM and who has taught various professionals how to interpret the DSM-IV would jeopardize his reputation to offer an interpretation of DSM-IV that is "convoluted and circuitous." Moreover, from a common sense standpoint, the individual's drinking pattern does not parallel the smoking pattern of a chain smoker. A chain smoker smokes every day and probably every hour of his waking day. Here, the individual does not drink every day. In fact, as the forensic psychologist points out, the individual refrains from drinking at least one week each month in order to be on-call for his emergency obligations. He does not "absent" himself from his emergency work obligations or his volunteer search and rescue activities in order to drink. Nor does he spend so much time drinking that he neglects feeding his horses and dogs, fails to take his dogs to training classes, fails to attend to the search and rescue responsibilities for which he volunteers, fails to fix dinner for his wife, or fails to meet his business or social obligations. In addition, evidence in the record shows that with the exception of the 1997 incident,<sup>19</sup> the individual either abstains from alcohol or drinks one drink while on business trips of up to one week's duration.

Since a diagnosis of alcohol dependence can be made under the Part 710 regulations on the basis of a medical professional's clinical judgment independent of the DSM-IV, I also carefully considered other aspects of the clinician's opinions, including the bases underlying those opinions. The forensic psychologist testified that the four psychological tests that he administered added an element of objectivity to his subjective determination under the DSM-IV. The Rorschach test revealed that the individual has adequate resources to cope with the demands life places on him, an important result since many people who are highly susceptible to excessive drinking to excess because they lack appropriate coping mechanisms. In addition, the MMPI-2 test results and the results from the other two tests are highly inconsistent with a person who is or will become an alcoholic.

In addition, the individual's physician testified that he recommended that the individual abstain from alcohol not because he believed that the individual had an alcohol addiction, but rather because he thought the absence of alcohol could help ameliorate some of the individual's medical issues. The physician confirmed his statement that while the individual uses alcohol regularly, there is no history of alcohol abuse. The physician's determination that the individual did not have a problem with alcohol *per se* is supported by laboratory test results for the period 1993 to 2000. Specifically, blood tests that typically can help identify heavy drinkers yielded normal results during this seven year period.

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<sup>19</sup> I find that the 1997 incident was an isolated incident that is mitigated by the passage of time and should not be used as the basis for a current diagnosis of alcohol dependence.

Finally, the forensic psychologist was a dynamic witness who testified with conviction about his opinions. He provided thoughtful, sound testimony that reflected his consideration not only of the DSM-IV but very practical observations as well. As I considered the forensic psychologist's testimony, I examined the statements of the numerous affiants and witnesses in the case. Cumulatively, these persons, including the individual's wife, have recently observed the individual at work, at home, hosting his parties, after his parties, on-call for emergency teams, at dog training classes, on vacation at a resort where alcohol was widely available, and on extended business travel. Not one of these witnesses has ever observed the individual drink to excess, act in a manner suggestive of intoxication, or exercise poor judgment while drinking. These testimonials are probative evidence suggesting that the individual is not currently exhibiting any indicia of alcohol dependence.

From a global perspective, the record is clear that the individual's alcohol use has not interfered with his quality of life, psychiatrically, socially, or functionally. He has not found it difficult to dramatically reduce his alcohol consumption. He does not have elevated enzymes. None of the psychological tests administered to him reveal a proclivity towards alcohol addiction. His personal physician of more than a decade never suspected or diagnosed the individual with an alcohol problem. The individual has never experienced trouble with the law because of his alcohol and, with the exception of the 1997 incident, has had an exemplary work record. Based on all these considerations, I find that the forensic psychologist used common sense and sound clinical judgment when he evaluated the totality of the individual's situation and concluded that the individual is not alcohol dependent.

I also carefully considered the 1997 incident, which I found to epitomize all the security concerns generally associated with excessive alcohol consumption: the individual's exercise of poor judgment, his unreliability, and his failure to control impulses which increased the risk that he could have unwittingly divulged classified information or been unable to resist influence, coercion, or exploitation by others. I also reviewed the various electronic mail correspondence and memoranda from DOE officials relating to this incident, and find that the individual's behavior during the 1997 incident was totally unprofessional and an affront to his host country, the DOE, and his colleagues. Ex. 3-9. Had this case come before me soon after the 1997 incident, I might have been inclined to recommend against the restoration of the individual's clearance based on the severity of the 1997 incident alone. However, six years have passed since the 1997 incident. The record demonstrates that individual has never failed to control his impulses or suffered any lapse in judgment at either a professional or personal level because of his alcohol usage since 1997. Moreover, the circumstances surrounding the 1997 incident appears to have been unique, suggesting to me that the 1997 incident can be characterized as isolated. Specifically, the individual was alone for two weeks living in an isolated part of a country where he could not speak the native language, and had no access to English radio, newspapers, or television. He had no work to do, and travel and other restrictions made leisure activities difficult. He did not normally drink "hard liquor" because he does not like it. Tr. at 710, 723. The record also reflects that over time the individual has accepted responsibility for his behavior and that he is unlikely to consume hard liquor in the future. Ex. 4-2 at 160. In addition, the individual convinced me that I should consider his long career at the DOE,



and note that there has never been before or since the 1997 incident any instances when the individual exercised poor judgment. Individual's Closing Statement at 2. On the contrary, the individual submitted 88 exhibits into the record evidencing scores of awards, letters of appreciation, commendations and superior performance evaluations. In the end, I am inclined to conclude that the significant defect in the individual's judgment and reliability that manifested itself during the 1997 incident has been mitigated due to the passage of time and its isolated nature.

Because I find that the individual does not suffer from alcohol dependence, I conclude that he does not fall within the definition of 10 C.F.R. 710.8(h) or one portion of 10 C.F.R. 710.8(j). I turn next to that portion of 10 C.F.R. 710.8(j) that pertains to a person who has "[b]een, or is, a user of alcohol habitually to excess."

## **2. Whether the Individual Is or Has Been a User of Alcohol Habitually to Excess**

As a preliminary matter, I point out that the Part 710 regulations do not require a medical professional to make a determination that a person is or has been a user of alcohol habitually to excess.<sup>20</sup> In this case, however, two medical professionals have expressed their opinions about whether the individual has been a user of alcohol habitually to excess for purposes of Criterion J. The DOE consultant-psychiatrist believes that the individual did habitually consume alcohol to excess and relies on the individual's statements about his alcohol usage and the definitions contained in the 1994 DOE Adjudicative Guidelines for Determining Eligibility for Access to Classified Matter and Special Nuclear Materials to support his position.<sup>21</sup> Tr. at 776. The forensic psychologist opines that the individual did not habitually consume alcohol to excess, and relies on the lack of any objective evidence such as marital, social, emotional, financial, legal or work-related problems associated with the individual's alcohol usage to support his position. *Id.* at 259-263.

Despite their differences, both experts agree that no one should not look only at the quantity of alcohol that a person consumes to determine whether that person is or has been a user of alcohol habitually to excess. Tr. at 259-262, 775. <sup>22</sup> From a common sense standpoint, I find that the quantity of alcohol that one consumes is one factor that may be considered in combination with others in assessing whether a security concern exists under Criterion J.

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<sup>20</sup> For example, on October 28, 1997, the DOE reviewed the circumstances surrounding the 1997 incident and the individual's statements that he gets intoxicated four or five times a year after consuming 12 beers. The Team Leader for the Security Office who does not appear to be a medical professional concluded that "it does appear that the subject may drink habitually, and sometimes to excess but not on a frequent basis. If he is involved in any alcohol related incidents in the future, further processing may be necessary." Ex. 1-6.

<sup>21</sup> These guidelines were superseded on September 11, 2001, by Appendix B to Subpart A of 10 C.F.R. Part 710-Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968. See 66 F.R. 47061, 47067 (September 11, 2001).

<sup>22</sup> While the numbers of alcoholic beverages a person consumes should not be the determining factor alone for a determination that a person habitually uses alcohol to excess, those numbers can be used in evaluating whether a person is reformed or rehabilitated from an alcohol-related condition.

The security concern associated with a person who drinks alcohol habitually to excess is that the person might suffer impaired judgment and reliability, thereby rendering the person unable to control his impulses, or unable to succumb to pressure, coercion, and duress. The new Part 710 Adjudicative Guidelines do not contain specific definitions of "habitual use to excess" but instead cite as a security concern: "[h]abitual or binge consumption of alcohol to the point of impaired judgment." See Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G. On the issue of impaired judgment, it is undisputed that the individual's judgment was impaired in 1997 when he consumed 12 to 13 beers and two to three shots of vodka over a four hour period. The behavior that manifested the individual's mental impairment was his confrontation with the foreign official and the unprofessional manner in which he comported himself in the sensitive country on the day in question. Apart from the 1997 incident, there are no other instances of the individual's judgment being impaired from his alcohol use. The testimonial evidence in the record from persons who have worked with the individual, have traveled on government business with him, have socialized with him, have visited his home, have spent time on resort vacations with him, and have observed him during his leisure and volunteer activities, indicates that the individual has not exhibited any impaired judgment after consuming alcohol. Nevertheless, there are the individual's admissions in the record regarding the number of times that he drank to the point of intoxication.

What is so problematic about the individual's admissions is that the individual has defined the term "intoxication" differently over the course of time. During the 1997 PSI, the individual defined "intoxication" as "you've lost your inhibitions and you just, you know, kinda feeling good. . ." Ex. 4-2 at 134. He told the personnel security specialist that he had been intoxicated 200-300 times over his lifetime. *Id.* at 135. According to the individual, under a definition of intoxication meaning "falling down and staggering drunk," he met this definition 10 times. *Id.*

During the 2000 PSI, the individual defined intoxication as "where your abilities are impaired." Ex. 4-1 at 26. He then admitted to the personnel security specialist that he gets intoxicated "every two, three months, if there's a big party or something." *Id.* at 27.

At the psychiatric examination, the individual defined intoxication as "when you are hindered in your ability to function." Ex. 2-1 at 8. The psychiatric report reflects that the individual told the DOE consultant-psychiatrist that he gets intoxicated once or twice a month. *Id.* at 8. At the hearing, the individual contended that the DOE consultant-psychiatrist misinterpreted some of his statements during the psychiatric examination and that his ability to prove that is hampered because the psychiatric interview was not tape recorded. In his closing statement, the individual once again disputes that he told the DOE consultant-psychiatrist that he became intoxicated twice a month.

During a post-hearing telephone conference, I asked the individual about the conflict between his closing statement and his hearing testimony that he gets intoxicated twice a month. The individual explained that he defined intoxication at the hearing as "you're feeling good, your inhibitions are down." Record of Post-Hearing Telephone Conference among the Hearing Officer, DOE Counsel, and the individual (August 27, 2003). According to the individual, the DOE consultant-psychiatrist's definition of intoxication meant slurred speech, etc. *Id.* I also asked the individual at the post-

hearing telephone conference if he is ever mentally impaired under his definition of intoxication and he responded negatively. *Id.* This representation, of course, directly contradicts his 2000 statements to the personnel security specialist.

After carefully weighing the individual's conflicting statements about the effects alcohol has on him, I find that until September 2001 the individual (1) drank to the point where his inhibitions were lessened twice per month, and (2) drank to the point of impairment between four and six times a year. In my opinion, this pattern of drinking constitutes habitual use of alcohol to excess and poses an unacceptable security risk under Criterion J. It defies common sense to believe that a security clearance holder whose inhibitions are diminished twice a month from the consumption of alcohol and who is impaired at least four times a year from the substance will always be able to control his impulses and always resist pressure, coercion or duress.

Despite this finding, I have determined that the individual has mitigated the security concern associated with his past habitual use of alcohol to excess. It has been almost two years since the individual dramatically reduced his alcohol consumption to levels which I would characterize as "minimal." By his own account, he has abstained from all alcohol consumption for months at a time. What he has had to drink in those two years is an occasional beer and a few glasses of wine. Moreover, the individual claims to have made a lifestyle change and has reduced his consumption of alcohol. In addition, there is corroboration in the record that supports the individual's representations about his current alcohol usage. Co-workers who have traveled with him since September 2001 report that he did not drink alcohol on extended business trips, and that he even passed up free beer at receptions. Ex. I; Ex. K. Those who have visited his home since September 2001 report that he has consumed one glass of wine at most. Ex. F. The individual also persuaded me that he will not return to drinking alcohol at the levels he did prior to September 2001. In the end, I find that the individual has modified his behavior in a manner supportive of sobriety. While it is impossible to predict with absolute certainty an individual's future behavior, it is my predictive assessment that the individual will not return to using alcohol habitually to excess because he understands and appreciates the negative implications that his previous drinking pattern could have on his security clearance.

### C. Criterion L

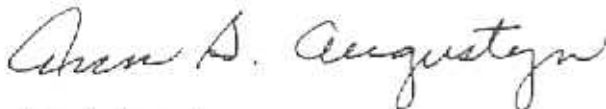
The Notification Letter cites the 1997 incident as the sole basis for suspending the individual's security clearance under Criterion L. The specific concerns cited in the Notification Letter under Criterion L are (1) the individual's statements to the DOE consultant-psychiatrist in 2001 that the individual was drunk in the sensitive country and DOE required him to return early; and (2) the individual's statements to the Personnel Security Specialist in 1997 that his boss told him he was getting calls from all over the United States from people saying that they understood that the individual was "drunk over there."

As fully discussed in Section IV.B. above, the 1997 incident was extremely serious. I find based on the record before me that the individual's excessive alcohol consumption on the day in question in

1997 and his concomitant inappropriate behavior cast aspersions on his reliability and trustworthiness, and furnished just cause for the DOE to believe that he had placed himself in a position that could have subjected him to pressure, coercion, exploitation or duress which might have caused him to act contrary to the best interests of the national security. Nevertheless, I find that the following factors in this case mitigate the Criterion L concerns: the passage of time (six years); the isolated nature of the 1997 incident (only one incident has occurred in his long and otherwise distinguished career); the unique circumstances surrounding the 1997 incident (he was alone in an isolated part of a foreign country, he had no work to do, he did not know the language, he could not travel due to restrictions, he had no diversions such as radio, television, or newspaper, or any other leisure activities at his disposal); and the fact that he ordinarily did not consume hard liquor and that he will probably not do so in the future. I also find that the behavior is unlikely to recur because the individual understands that his excessive alcohol consumption on the day in question led to his inappropriate conduct. See Ex. 4-2 at 160.

#### V. Conclusion

I find that the DOE properly relied on 10 C.F.R. 710(h), (j), and (l) in suspending the individual's security clearance on the basis of the information that the agency had before it at the time. After considering all the relevant information, favorable and unfavorable, in a comprehensive and common-sense manner, I find that the individual has mitigated the security concerns associated with each of the three criteria at issue. Therefore, I conclude that the individual has demonstrated that restoring his access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The DOE may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. 710.28.



Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date:

99 10 2003